The opinion in support of the decision being entered today was  $\underline{\text{not}}$  written for publication and is  $\underline{\text{not}}$  binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Ex parte ANDREW H. SIMON and CYPRIAN E. UZOH

\_\_\_\_\_

Appeal No. 2001-1118
Application No. 09/262,690

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ORDER REMANDING TO EXAMINER

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An examination of the record indicates that page 3 of the Examiner's Answer mailed July 5, 2000 (Paper No. 11) states:

The following ground(s) of rejection are applicable to the appealed claims:

## Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 13, 14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chakravorty et.al. (U.S. Patent No. 5,436,504).

Clarification is required as to whether the § 102 rejection is applicable in this ground of rejection.

In addition, according to page 3 of the Examiner's Answer mailed July 5, 2000 (Paper No. 11), "[t]he copy of the appealed claims contained in the Appendix to the brief is correct." However, the language of claims 15 and 17 in the Appendix differs from its last amended version. It should be

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noted that page 2 of the Examiner's Answer stated that "[t]he amendment after final rejection filed on May 1, 2000 has been entered." A review of the file indicates the amendment was not entered.

Accordingly, it is

ORDERED that the application is remanded to the examiner:

- for clarification regarding the status of the § 102
   rejection;
- 2. for notification to appellant to submit a corrected Appendix for the Appeal Brief filed May 1, 2000 (Paper No. 9), or for the examiner to issue a supplemental Examiner's Answer which contains a correct copy of claims 15 and 17;
- 3. for entry of the amendment filed May 1, 2000 (Paper No. 8);
- 4. for written notification to appellants of the action taken; and
  - 5. for such further action as may be approriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the

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status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS AND INTERFERENCES

By:

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